

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket 96-128
Reclassification and Compensation)	
Provisions of the Telecommunications	}	
Act of 1996)	
)	
Petitions for Declaratory Ruling, Reconsideration)	NSD File No. L-99-34
And/or Clarification of the Payphone Compensation)		
Second Order on Reconsideration)	

COMMENTS OF INTELICALL OPERATOR SERVICES, INC.

Intellicall Operator Services, Inc., dba ILD ("ILD") hereby respectfully files its comments in response to the Federal Communications Commission's ("Commission's") August 20, 2001 Public Notice¹ requesting comments from interested parties on Petitioners' requests for declaratory rulings, reconsideration and/or clarification of the *Second Order on Reconsideration*². ILD will restrict its comments to the requests by Petitioners to change the definition of a completed call which it considers a major threat to established Commission policy upon which ILD has relied in its long range strategic and financial planning.

As a major provider of prepaid and access code operator services, Intellicall Operator Services, Inc. ("ILD") has a vested interest in the outcome of this proceeding and any changes to existing rules that may result. ILD is especially concerned that the financial impact that will

¹ Public Notice DA 01-1967 Released August 20, 2001.

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, NSD file No. L-99-34, Second Order on Reconsideration, FCC 91-109 (rel. April 5, 2001) (*Second Order on Reconsideration*).

result from a change in the fundamental definition of a completed call as proposed by Petitioners³ ("WorldCom", "AT&T" and "Global") will adversely affect ILD, other similarly situated providers of prepaid and access code operator services and the transient public. The net result of such a drastic change will be to compensate PSPs for all calls, even those that are incomplete under the current definition. Since most states do not permit charging end users for incompleting calls, providers would have no option except to increase per call charges to end users on all completed calls to compensate. The magnitude of such increase would be based on each provider's completion rates that historically are low from payphones. Such increase would be substantial, especially on international calls that have a typical completion rate of 25% or less. Prepaid card users would be especially frustrated since the value of their cards would be drastically reduced by merely making calls from payphones. ILD urges the Commission to recognize that the end-to-end nature of the calls in question is the linchpin of many prior orders and decisions and that any change would invoke the "law of unintended consequences" by upsetting the base upon which the Commission has constructed its policies.

³ *WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration*, CC Docket No. 96-128 (filed May 29, 2001).WorldCom
AT&T Petition for Clarification and/or Reconsideration, CC Docket No. 96-128 (filed May 29, 2001).AT&T
Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification, CC Docket No. 96-128 (filed May 29, 2001).Global

Adoption of a Two-Call Concept Would Fly in the Face of 20 Years of Commission Policy

A completed call is currently defined as "a call that is answered by the called party." Petitioners WorldCom and AT&T request that the Commission change the long-standing definition of a completed call because they claim to be unable to rely on their switch-based reseller customers ("SBRs") to provide accurate and timely information identifying which calls routed to them are ultimately completed.⁴ They make the extraordinary request that the Commission define a completed call as one completed to the SBR switch whether or not the calling and called parties ever speak.

Further, Petitioners allege that implementing or arranging for tracking procedures would be inconvenient, time consuming and expensive. This is not rocket science. Businesses transmit and exchange data routinely all the time, even those with disparate systems and procedures. In fact, ILD and perhaps others, has taken its obligations under the *Second Order* seriously and together with an underlying carrier have developed the systems and interfaces to accept ILD's existing call detail format to fulfil its compensation and reporting obligations under the *Second Order*.

As justification for its request for such extraordinary relief WorldCom offers only a whole litany of dire consequences that would result from obtaining and using completed call data records from SBRs, up to and including deadly viruses infecting their data systems.⁵ Tellingly, WorldCom presents no evidence that it ever even attempted to work with its SBR customers to

⁴ See *WorldCom*. at p 4; *AT&T* at p 4 ; and *Global* at p 6.

⁵ See *WorldCom* at pps 3-4.

provide the call completion data in a usable format needed to fulfill its compensation obligations to PSPs and that failures of such trials were the basis of its dire predictions. In fact, WorldCom has the power of the contract that could require SBR signatories to provide accurate data in a specified format as a condition of service. Again, WorldCom offers no evidence that it has implemented any such contractual requirement and that SBRs attempted to comply and failed for the reasons stated.

Unlike WorldCom, AT&T does not directly ask the Commission to adopt the two call concept, but does so indirectly by asking the Commission to validate AT&T's apparent long standing practice of compensating PSPs for all calls completed to an SBR's switch whether or not such calls are ultimately completed to the called party.⁶ It offers as an excuse that it does not receive information from resellers that would permit it to compensate PSPs in accordance with current Commission rules and has apparently made no attempts to work with its SBR customers to obtain such information⁷. Although not stated one way or the other in AT&T's Petition, it would be a mistake to conclude that AT&T has not illegally billed its SBR customers for uncompleted calls unless one also believes in AT&T's altruism.

Although it offers no basis for its assertions, AT&T opines that it would take time and money for both IXC's and SBRs to develop systems to track to completion calls originating on an IXC's network and completing on the SBR's network and pass the information back to the IXC for calculating compensation due PSPs⁸. Like WorldCom, it offers no evidence that it ever even

⁶ See *AT&T*. at pps 2-4.

⁷ See *id.* at 3.

⁸ *id.*

attempted to determine from its SBR customers whether its suppositions were correct or to require them to provide timely and accurate data as a condition of service. If it had, AT&T would find that such information is routinely generated by SBRs and could easily be made available to IXC's in a compatible format on a monthly basis.

Adoption of a Timing Surrogate Would Violate Section 276 and Should be Rejected

Global also requests a change in definition of a completed call and urges the Commission to adopt a timing surrogate that would permit IXC's to determine call completion without input from its SBR customers⁹. What Global fails to recognize is that the elapsed time between delivery of a call to an SBR switch to answer by the called party (window) varies widely, especially with international calls so a "one size fits all" timing surrogate is unworkable and unfair. To make sure that no completed calls were ever not counted, the window would have to be essentially of infinite duration creating the unintended consequence of creating compensation obligations for incomplete calls thus creating a windfall for PSPs at the expense of SBRs (especially those who service international locations). Further, in the *Second Order* the Commission dismissed the timing surrogate concept out of hand since regardless of duration, a timing surrogate regime would result in a clear violation of Section 276's mandate¹⁰ since either some completed calls would not be compensated or conversely, all uncompleted calls would be compensated, an equally undesirable and unintended result.¹¹ Global has offered no

⁹ See *Global* at p 5.

¹⁰ 47 U.S.C § 276(b)(1)(A).

¹¹ See *Second Order* at para.. 63.

explanation or rationale that could lead the Commission to a different conclusion a second time around.

Global goes on to assert that it is unlikely that IXCs and their SBR customers could ever develop the requisite systems to determine whether individual calls were completed to the called party and even if they could, not in the 7(sic)-month implementation period established by the Commission in the *Second Order*.¹² It also makes the absurd assertion that the cost of implementation would be in the hundreds of millions of dollars.¹³ Like WorldCom and AT&T, Global presents no justification of these assertions leading to the conclusion that Global never entered into meaningful discussions with its SBR customers as to the availability of tracking information upon which its compensation and reporting obligations could be based. Also like WorldCom and AT&T, Global apparently has never made the provision of timely and accurate call completion data a contractual condition of service. As noted previously, this is a specious argument given that secure, accurate data exchange is common practice in today's business world.

Conclusion: The Commission Should Deny t Petitioners' Requests to Change the Definition of a Complete Call and Reject Attempts to Adopt a Two-Call Definition

Regardless of the veracity of WorldCom's and AT&T's claims, numerous prior decisions¹⁴ by the Commission rule against the adoption of the "two call" concept¹⁵ that

¹² See *Global* at 6-7.

¹³ *id.*

¹⁴ See *Teleconnect Co. v Bell Tel. Co. of Pa.* 10 FCC Rcd No. 4 (Co. Car. Bur 1995 (Bureau Order) at para. 12; See *Teleconnect Co. v Bell Tel. Co. of Pa.* 6 FCC Rcd No. 18 (Co. Car. Bur 1991 (Bureau Order); *Southwestern Bell Telephone Co.* Transmittal Nos. 1537 and 1560. 2FCC Rcd 3125 (1988) April 23, 1988; *Florida Payphone*, 54 F.3d at 860.

Petitioners advocate. Such decisions make it quite clear and unequivocal that "both court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications ¹⁶" and "...the Common Carrier Bureau determined that an 800 service credit card call that is routed through an interexchange carrier's switch should not be viewed as two calls and that the switch was merely an intermediate step in a single end-to-end communication.¹⁷" The Commission itself reaffirmed these precedents in the *Report and Order*.¹⁸ Neither WorldCom nor AT&T presented any credible argument that these precedents are inapplicable, out of date or that the Commission somehow erred in reaching its definition of a completed call in the *Report and Order*. Rejecting these precedents merely for WorldCom's and AT&T's convenience would lead the Commission down a "slippery slope" and upset the entire base upon which the Commission has constructed its policies over the years. Significantly, adoption of the "two-call" principle would undercut state jurisdiction over end-to-end intrastate calls since all calls would now be interstate except those originating and terminating in the same state in which the intervening switch is located. For example, revenues which have previously been treated as intrastate would then be interstate causing carriers to make USF contributions in the interstate arena rather than intrastate.

(...continued)

¹⁵ See *Teleconnect Co. v Bell Tel. Co. of PA* 10FCC Rcd No. 4(Co. Car. Bur. 1995) (Bureau Order) at para. 23.

¹⁶ id at para. 12.

¹⁷ See *Teleconnect Co. v Bell Tel. Co. of Pa.* 6 FCC Rcd. No. 18 (Co. Car. Bu. 1991) Bureau Order at para. 23.

¹⁸ Report and Order at 63.

State regulatory agencies would clearly look askance at such erosion of their authority and USF revenues and would most certainly intervene to protect their interests.

Although the timing surrogate proposed by Global avoids the jurisdictional and policy issues created by the two-call issue, it would clearly violate Section 276 and must be discarded.

For the foregoing reasons, ILD urges the Commission to reject Petitioner's proposals to change the definition of a completed call from "a call that is answered by the called party."

Respectfully submitted,

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